



DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2021-OPE-0077]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committees.

SUMMARY: We announce our intention to establish negotiated rulemaking committees to prepare proposed regulations for programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The Department is committed to advancing equitable outcomes for all students and invites comments from organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations being considered by the particular committee. We also announce public hearings at which interested parties may comment on the topics for regulation suggested by the Department and suggest additional topics that should be considered for action by the negotiating committees. In addition, we announce that the Department will accept written comments on the topics suggested by the Department and suggestions for additional topics that should be considered for action by the negotiating committees.

DATES: The dates, times, and locations of the public hearings are listed under the SUPPLEMENTARY INFORMATION section of this

document. We must receive written comments on the topics for regulation suggested by the Department and additional topics that should be considered for action by the negotiating committees on or before July 1, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C179, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public (including those comments submitted by postal mail, commercial delivery, or hand delivery) available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at: [www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html). For information about the public hearings, or for additional information about negotiated rulemaking, contact: Vanessa Gomez, U.S. Department of Education, 400 Maryland Ave., SW., Room 2C179, Washington, DC 20202. Telephone: (202) 453-6708. Email: [vanessa.gomez@ed.gov](mailto:vanessa.gomez@ed.gov).

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select participants for the negotiated rulemaking committees from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will

select from the nominees individual negotiators who reflect the diversity among program participants.

We intend to convene multiple committees to develop proposed regulations on the affordability of postsecondary education, institutional accountability, and Federal student loans. Each committee will be comprised of a unique set of negotiators. The public will be made aware of the schedule and topics of each committee meeting in subsequent *Federal Register* notice(s).

### Regulatory Issues

The Department suggests the following topics for regulation:

- (1) Change of ownership and change in control of institutions of higher education under 34 CFR 600.31;
- (2) Certification procedures for participation in title IV, HEA programs under 34 CFR 668.13;
- (3) Standards of administrative capability under 34 CFR 668.16;
- (4) Ability to benefit under 34 CFR 668.156;
- (5) Borrower defense to repayment under 34 CFR 682.410, 682.411, 685.206, and 685.222;
- (6) Discharges for borrowers with a total and permanent disability under 34 CFR 674.61, 682.402, and 685.213;
- (7) Closed school discharges under 34 CFR 685.214 and 682.402;
- (8) Discharges for false certification of student eligibility under 34 CFR 685.215(a)(1) and 682.402;

(9) Loan repayment plans under 34 CFR 682.209, 682.215, 685.208, and 685.209;

(10) The Public Service Loan Forgiveness program under 34 CFR 685.219;

(11) Mandatory pre-dispute arbitration and prohibition of class action lawsuits provisions in institutions' enrollment agreements (formerly under 34 CFR 685.300) and associated counseling about such arrangements under 34 CFR 685.304;

(12) Financial responsibility for participating institutions of higher education under 34 CFR subpart L, such as events that indicate heightened financial risk;

(13) Gainful employment (formerly located in 34 CFR subpart Q); and

(14) Pell Grant eligibility for prison education programs under 34 CFR part 690.

We also invite public input on how the Department could address, through its title IV regulations, gaps in postsecondary outcomes such as retention, completion, loan repayment, and student loan default by race, ethnicity, gender, and other key student characteristics.

After a complete review of the public comments presented at the public hearings and in the written submissions, we will publish a document (or documents) in the *Federal Register* announcing the specific topics for which we intend to establish negotiated rulemaking committees and a request for nominations for individual negotiators for the committees who represent the

communities of interest that would be significantly affected by the proposed regulations. This document will also be posted on the Department's website at:  
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

### Public Hearings

We will hold virtual public hearings for interested parties to comment on the rulemaking agenda from 10:00 a.m. to 12:00 p.m. and 2:00 p.m. to 4:00 p.m., Eastern time on the following dates:

- June 21, 2021;
- June 23, 2021; and
- June 24, 2021.

Further information on the public hearings is available at:  
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Individuals who would like to present comments at the public hearings must register by sending an email message to [negreghearing@ed.gov](mailto:negreghearing@ed.gov) no later than 12:00 p.m. Eastern time on the business day prior to the public hearing at which they want to speak. The message should include the name of the speaker, the email address of the speaker, the general topic(s) the individual would like to address, and one or more dates and times during which the individual would be available to speak. We will attempt to accommodate each speaker's preference for date and time; however, if we are unable to do so, we will make

the determination on a first-come first-served basis, based on the time and date we received the message. We will limit each participant's comments to five minutes.

The Department will notify speakers of the time slot reserved for them and provide information on how to log in to the hearing as a speaker. An individual may make only one presentation at the public hearings. If we receive more registrations than we can accommodate, the Department reserves the right to reject the registration of an entity or individual affiliated with an entity or individual that is already scheduled to present comments to ensure that a broad range of entities and individuals are able to present. Unique speaker access to the meetings will be through Microsoft Teams.

In part due to increased cybersecurity concerns, individuals who want to observe the public hearing, but who do not want present comments, are required to register. We will post registration links for attendees who wish to observe on our website at:

[www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html).

There will be a unique link each day for attendees who wish to observe. Non-speaking attendees will join the public hearings through Microsoft Teams Live and will be muted with no option to unmute for the duration of each public hearing. The Department will also post transcripts of the hearings on that site.

The Department will accept written comments via the Federal eRulemaking portal, and by postal mail, commercial

delivery, or hand delivery, through July 1, 2021. (See the ADDRESSES section of this document for submission information.)

#### Schedule for Negotiations

We anticipate that any committees established after the public hearings will begin negotiations no earlier than August 2021, with the committees meeting for up to three sessions of approximately five days each at roughly four-week intervals. The committees will meet virtually. We may adjust the number of days of each session and time between sessions to adapt to the virtual environment. The dates and locations of these meetings will be published in a subsequent notice in the *Federal Register* and will be posted on the Department's website at:

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html>.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and



the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or portable document format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available for free on the site. You may also access documents of the Department published in the *Federal Register* by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

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Michelle Asha Cooper,  
*Acting Assistant Secretary  
for Postsecondary Education.*

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